

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 368

INTRODUCER: Senator Wilson

SUBJECT: School Health Services

DATE: February 9, 2006

REVISED: 02/15/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Fav/1 amendment</u>
2.	<u></u>	<u></u>	<u>ED</u>	<u></u>
3.	<u></u>	<u></u>	<u>JU</u>	<u></u>
4.	<u></u>	<u></u>	<u>HA</u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

The bill creates the “One School, One Nurse Act.”

The bill modifies current sovereign immunity provisions of the School Health Services Act to specify that any person who provides school health services under a school health services plan and who is the employee or agent of a health care entity that has agreed in writing to act on behalf of the state as an agent of the Department of Health (DOH or department) is considered an agent of the state for purposes of sovereign immunity when rendering school health services. The bill establishes procedures and criteria for the awarding of state matching funds for the delivery of school nurse services.

The bill amends the section of statute relating to the state’s waiver of sovereign immunity, to extend the state’s sovereign immunity to health care providers, or employees or agents of a health care entity, acting under a contract with DOH and rendering school health services under a local school health services plan, while acting within the scope of their license, under the supervision of the county health department, and pursuant to guidelines established in the school health services plan.

The bill provides legislative intent with regard to funding a nurse in every public school in the state and provides \$75,000 in General Revenue funds for a school health summit.

The bill amends ss. 381.0056 and 768.28, Florida Statutes.

The bill creates s. 381.0058, F.S., and three undesignated sections of law.

II. Present Situation:

School Health Services Act

Section 381.0056, F.S., establishes the School Health Services Act. The department has responsibility, in cooperation with the Department of Education (DOE), to supervise the administration of the school health services program and perform periodic program reviews. Basic school health services supplement parental responsibilities for child health and include low cost population-based preventive health services. The state plan for school health services must be developed by DOH in cooperation with DOE to include, at a minimum, a plan for the delivery of school services; accountability and outcome indicators; strategies for assessing and blending financial resources; and the establishment of a data system.¹

Section 381.0057, F.S., specifies requirements for funding of school health services in addition to funding under the School Health Services Act. The section outlines state funding requirements for the provision of comprehensive school health services by county health departments and local school districts. The funds are to be targeted to school districts or schools, which have a high incidence of medically underserved high-risk children, low birthweight babies, infant mortality, or teenage pregnancy.

Full-service School Programs

Section 402.3026, F.S., outlines statutory requirements for full-service school programs, which must be jointly established, by DOE and DOH to serve students from schools that have a student population that has a high risk of needing medical and social services. Under a “full-service” school program, DOH staff provide specialized services to high-risk students at school as an extension of the educational environment. Under the full-service school programs, county health department staff provide services to these high-risk students through facilities that are established on the grounds of the school. The services may include nutrition services, basic medical services, and aid to dependent children, parenting skills, counseling for abused children, counseling for children at high risk for delinquent behavior and their parents, and adult education. The full-service schools must integrate the DOH services that are critical to the continuity-of-care process.

Availability of School Health Nurses

To assess the adequacy of school health services, a common standard that is used is the nurse-to-student staffing ratio. Since 2000, the federal government and the National Association of School Nurses has recommended a school nurse-to-student ratio of 1 to 750. The registered nurse-to-student ratio for Florida is 1 to 2,674 and there was one registered nurse per 3.5 schools for the 2004-05 school year.² The national average school nurse-to-student ratio is 1 to 1,187.³ According to DOH, as of June 30, 2005, there were 3,879 public schools and 1,001 registered nurses providing school health services in those schools.

¹ See Rule 64F-6.002, Florida Administrative Code.

² Source: Florida Department of Health, Family and Community Health School Services.

³ Source: Florida Department of Health, Family and Community Health School Services.

School-based Health Centers

According to officials at DOH, school-based health centers have been established in select schools to provide primary medical care. Such care is distinct from the school health services required by s. 381.0056, F.S. School-based health centers have been created with funding from federal or community grants. Department officials note that as of September 2004, there were about 116 centers located at schools in seven counties in Florida. Seven of the school-based health centers are sponsored by county health departments, and the remainder of the centers are sponsored by hospitals, community health centers, school districts, or universities.

Sovereign Immunity

Article X, s. 13, of the State Constitution, authorized the Florida Legislature in 1868 to waive sovereign immunity by stating that, "Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating." The doctrine of sovereign immunity prohibits lawsuits in state court against a state government, and its agencies and subdivisions without the government's consent. Section 768.28, F.S., provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions, but imposes a \$100,000 limit on the government's liability to a single person and for claims arising out of a single incident, the limit is \$200,000. Section 768.28, F.S., outlines requirements for claimants alleging an injury by the state or its agencies. Section 11.066, F.S., requires a claimant to petition the Legislature, in accordance with its rules, to seek an appropriation to enforce a judgment against the state or state agency. The exclusive remedy to enforce damage awards that exceed the recovery cap is by an act of the Legislature through the claims bill process. A claim bill is a bill that compensates an individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency.

Section 768.28(9), F.S., defines "officer, employee, or agent" to include, but not be limited to, any health care provider when providing services pursuant to s. 766.1115, F.S., any member of the Florida Health Services Corps, as defined in s. 381.0302, F.S., who provides uncompensated care to medically indigent persons referred by DOH, and any public defender or her or his employee or agent, including among others, an assistant public defender and an investigator.

The second form of sovereign immunity potentially available to private entities under contract with the government is set forth in s. 768.28(9), F.S. It states that agents of the state or its subdivisions are not personally liable in tort; instead, the government entity is held liable for its agent's torts. The factors required to establish an agency relationship are: (1) acknowledgment by the principal that the agent will act for him; (2) the agent's acceptance of the undertaking; and (3) control by the principal over the actions of the agent.⁴ The existence of an agency relationship is generally a question of fact to be resolved by the fact-finder based on the facts and circumstances of a particular case. In the event, however, that the evidence of agency is susceptible of only one interpretation the court may decide the issue as a matter of law.⁵

⁴ *Goldschmidt v. Holman*, 571 So.2d 422 (Fla. 1990).

⁵ *Campbell v. Osmond*, 917 F. Supp. 1574, 1583 (M.D. Fla. 1996). See also *Stoll v. Noel*, 694 So.2d 701 (Fla. 1997).

Under the school health services program, health care entities receive a limitation on their civil liability under the doctrine of sovereign immunity. Under s. 381.0056(10), F.S., any health care entity that provides school health services under contract with DOH under a school health services plan developed under the act, and as part of a school nurse service public-private partnership, is deemed to be a corporation acting primarily as an instrumentality of Florida solely for the purpose of limiting liability under s. 768.28(5), F.S. The limitations on tort actions in s. 768.28(5), F.S., must apply to any action against the entity with respect to the provision of school health services, if the entity is acting within the scope of and pursuant to guidelines established in the contract or by rule of DOH. The contract must require the entity, or the partnership on behalf of the entity, to obtain general liability insurance coverage, with any additional endorsement necessary to insure the entity for liability assumed by its contract with DOH.

III. Effect of Proposed Changes:

Section 1. Provides that the act may be cited as the “One School, One Nurse Act.”

Section 2. Amends s. 381.0056, F.S., to revise the circumstances under which a person is covered by sovereign immunity while providing school health services under a school health services plan. The bill provides that any person who provides school health services under a school health services plan and who is the employee or agent of a health care entity that has agreed, in writing, to act on behalf of the state as an agent of DOH, to provide school health services, with or without compensation, is an agent of the state with respect to such services for purposes of s. 768.28, F.S., which provides that sovereign immunity for tort liability is waived for the state, and its agencies and subdivisions within certain financial limitations.

The current provisions of s. 381.0056, F.S., are deleted, which specify that:

- Any health care entity that provides school health services under contract with DOH under a school health services plan developed under the School Health Services Act, and as part of a school nurse services public-private partnership, is deemed to be a corporation acting primarily as an instrumentality of Florida solely for the purpose of limiting liability under s. 768.28(5), F.S.;
- The limitations on tort actions in s. 768.28(5), F.S., must apply to any action against the entity with respect to the provision of school health services, if the entity is acting within the scope of and pursuant to guidelines established in the contract or by rule of DOH;
- The contract must require the entity, or the partnership on behalf of the entity, to obtain general liability insurance coverage, with any additional endorsement necessary to insure the entity for liability assumed by its contract with DOH; and
- The Legislature intends that entities purchase insurance to cover all liability claims and that neither the state nor DOH shall be responsible for payment of any claims or defense costs for claims brought against the entity or its subcontractor.

Section 3. Creates s. 381.0058, F.S., to specify legislative intent that matching funds, in addition to existing state funding under the School Health Services Act, be provided in those communities where interest in school health services has been evidenced by participation by public or private entities in the funding or delivery of school nurse services. The purpose of the funding is to

encourage the development of programs that offer the greatest potential for promoting student health, increasing the availability of and access to nurses in school settings, and fostering community participation for school nurse services. Matching funds must be available for implementing school health services in the basic school health program under s. 381.0056, F.S., the comprehensive school health services program under s. 381.0057, F.S., and the full-service school program under s. 402.3026, F.S. The bill specifies that it is the intent of the Legislature that tobacco-settlement revenue be used to pay for health and human services for children.

The section outlines requirements for the Secretary of Health, in cooperation with the Commissioner of Education, to publicize the availability of state matching funds for school health services and to form a committee to determine the eligibility of public and private entities to receive matching funds. Communities seeking state matching funds for school health services must submit a proposal to the committee. The bill specifies the content of the proposals and the criteria for awarding the matching funds. A county health department or school district that receives matching funds may not supplant more than 50 percent of the current local contributions to school health services funding as documented in the local school health services plan.

Section 4. Amends s. 768.28, F.S., to extend the state's sovereign immunity to health care providers, or employees or agents of a health care entity, under a contract with DOH and rendering school health services as specified in a local school health services plan. The section is amended to grant sovereign immunity solely for the delivery of school health services to persons while acting within the scope of their license, under the supervision of the county health department, and pursuant to guidelines established in the school health services plan.

The bill specifies that partnership agreements documented in the school health services plan, including related contracts and memoranda or agreement, constitute a contract. The contract must provide for the indemnification of the state up to the limits of sovereign immunity.

Existing law extends sovereign immunity under s. 381.0056(10), F.S., to *entities* providing health care services under a contract when acting within the scope of the guidelines established in the contract or by the rules of DOH. Such entities providing school health services must obtain general liability insurance coverage, with any additional endorsement necessary to insure the entity for liability assumed by its contract with DOH.

Section 5. Creates an undesignated section of law, to provide legislative intent that sufficient resources and funding be available to provide a nurse in every public school in the state under this act. The section cites recognition of existing funding for basic and comprehensive school health services, full-service school programs, and Medicaid funding, all of which may be used in partial funding. The bill recognizes that local funding can be used for matching funds for local delivery of school health services through public-private partnerships as created in the act. Legislative intent is further expressed that the remainder of resources needed for placing a nurse in every school must be derived from the state's tobacco-settlement revenue.

Section 6. Provides an appropriation of \$75,000 from the General Revenue Fund to the DOH for the purpose of convening a school health summit as recommended by Senate Interim Project 98-30, September 1998.

Section 7. Provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides a General Revenue appropriation of \$75,000 for a school health summit.

According to DOH, as of June 30, 2005, there were 3,879 public schools and 1,001 registered nurses providing school health services in those schools. The bill's stated intent of funding a school health nurse in every public school has a cost that will be borne by both private and public entities. The bill creates a need for approximately 2,878 additional registered nurses. Under DOH's estimate of \$40,058 per school health nurse FTE, the amount needed to fully implement the nursing requirements of the bill is approximately \$115,286,924.

The department also estimates the need for two additional professional staff (a governmental operations consultant II and a registered nurse consultant) at the state school health services program office to support the additional county level program staffing of nurses in each school. This cost amounts to recurring costs of \$106,776 for salaries and fringe benefits of the staff. The department also estimates the need for each nurse and central program staff to have a computer and the costs for the computers are estimated at \$5,472,000. The estimated travel expenses for fiscal year 2006-07 are

\$40,369,291 and for fiscal year 2007-08 are \$30,744,794. The department estimates total expenditures of \$161,309,991 for fiscal year 2006-07 and \$146,138,494 for fiscal year 2007-08.

The department estimates that it will be liable for additional risk management and litigation costs because the bill revises existing law relating to sovereign immunity in s. 381.0056(10), F.S., for the delivery of school health services by any *person* rather than a *health care entity* that is part of a school nurse services public private partnership. The department states that this will expand the class of agents of the state for purposes of the extension of sovereign immunity.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The circumstances under which the bill extends sovereign immunity for the delivery of school health services in s. 381.0056, F.S., and s. 768.28, F.S., do not appear to conform.

Under the bill, s. 381.0056(10), F.S., extends sovereign immunity to any *person* who provides school health services under a school health services plan and who is the employee or agent of a health care entity that has agreed, “in writing,” to act on behalf of the state as an agent of DOH, to provide school health services, with or without compensation.

Section 768.28(21), F.S., as created by the bill, extends sovereign immunity to a “health care provider, or any employee or agent of a health care entity” who has *contractually agreed* to act on behalf of DOH to provide school health services as specified in a school health services plan, with or without compensation. Under s. 768.28(21), F.S., the provider must be acting within the scope of his or her license, under the supervision of the county health department and pursuant to guidelines *established in the school health services plan*. The partnership agreements documented in the school health services plan developed by the county health department and district school board and related contracts constitute a contract. The contract must provide for the indemnification of the state by the agent for any liabilities incurred, up to the limits (\$100,000 per person and \$200,000 per incident) specified in s. 768.28, F.S.

The existing law under s. 381.0056(10), F.S., provides limitations on tort actions for the delivery of school health services by specified contracting entities as part of a school nurse services public private partnership. Section 381.0056(10), F.S., gives additional flexibility to DOH and the contracting entity to specify requirements in the contract which could be tailored to the specific needs of the contracting parties. Section 381.0056(10), F.S., conditions, in part, the limitation on tort actions against the entity, on the entity’s compliance with guidelines *established in the contract or by rule of the department*. The bill requires the entity or health care provider to act within guidelines *established in the school health services plan*.

The Department of Financial Services (DFS) reports that the bill will make a private entity an agent of the state and that the health care providers and their employees would be covered in

accordance with s. 768.28, F.S., by the Risk Management Trust Fund for negligence actions. Officials at DFS note that they do not know the extent or scope of the program and that it would be difficult to determine the department's exposure. The Department of Financial Services notes that DOH would have, even though the chances may be slim, claims bill exposure.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 032116 by Health Care:

Removes sections 2 and 4 of the bill that extend sovereign immunity for the delivery of school health services. (WITH TITLE AMENDMENT).

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
